

Original filed 5/9/07

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the calculation of his custody credits pursuant to his parole revocation. Petitioner provided documentation of his first level of appeal in the prison administrative appeal process. However, Petitioner did not allege that he presented any of his claims to the California Supreme Court prior to filing this habeas action. See Petition at 3-9. On February 27, 2007, the Court ordered Petitioner to show cause why the petition should not be dismissed without prejudice because he had not exhausted his state court remedies prior to filing the instant petition. The Court directed Petitioner to file a response within **thirty days** stating: (1) whether he has an appeal, habeas petition or other post-conviction proceeding now pending before the state court; and (2) whether he has presented the claims in the instant petition to the California

1 Supreme Court. The Court notified Petitioner that the failure to file a timely response
2 would result in the Court dismissing the instant petition without prejudice for failure to
3 exhaust state court remedies.

4 As of the date of this order, Petitioner has not responded to the Court's order, nor
5 communicated with the Court. Accordingly, the instant petition is DISMISSED without
6 prejudice for failure to exhaust state court remedies. The Clerk shall terminate any
7 pending motions and close the file.¹

8 IT IS SO ORDERED.

9 DATED: 5/9/07



JEREMY FOGEL
United States District Judge

27 ¹ The Court notes that Petitioner should act with due diligence to exhaust his claims in
28 the state supreme court if he intends to return to this Court based upon AEDPA's statute of
limitations for his federal habeas petition. See 28 U.S.C. § 2244(d).

1 A copy of this ruling was mailed to the following:

2 James Paul Gilmore, Jr.
3 P-46444
4 CA State Prison - Avenal
P.O. Box 9
Avenal, CA 93204

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